equitable right as an attaching creditor of the promisee. See WILLISTON'S WALD'S POLLOCK ON CONTRACTS, 245. It is not required that the promisee have an existing liability to the third party at the time of contracting. *Coster* v. *Mayor, etc. of Albany*, 43 N. Y. 399. Nor does it seem a valid objection to recovery, that the promise, as in the principal case, is an asset available only to the promisee's estate. A man's interest in securing the convenient discharge of obligations arising after death may be as real as with regard to obligations existing during life. The jurisdictions which recognize the insurance policy type of third party contracts do not require that the sole beneficiary be ascertained when the promise is made. *Whitehead* v. *Burgess*, 61 N. J. L. 75, 38 Atl. 802. Where the beneficiary is not a mere donee this seems even less essential. *Coster* v. *Mayor, etc. of Albany, supra*, 412; *Chanute National Bank* v. *Crowell*, 6 Kan. App. 533, 51 Pac. 575. But since allowing the third party an action at law, although a well-established doctrine is perhaps anomalous, it may be justifiable to restrict this right to cases where it clearly appears that performance was to be rendered to the third party directly, and not to the promisee. *Cf. Burton* v. *Larkin*, 36 Kan. 246, 13 Pac. 398; *Thomas Mfg. Co.* v. *Prather*, 65 Ark. 27, 44 S. W. 218. This practical limitation would support the result in the principal case, where it was not clear that the promise was to pay the undertaker directly rather than the deceased's representatives. *Contra, Riordan* v. *First Presbyterian Church*, 3 Misc. (N. Y.) 553, 23 N. Y. Supp. 323, aff'd 6 Misc. (N. Y.) 84, 26 N. Y. Supp. 38; *Traver* v. *Snyder*, 34 Misc. (N. Y.) 406, 69 N. Y. Supp. 750.

COPYRIGHT — PROTECTION OF FICTION ORIGINALLY PUBLISHED AS NEWS. — The plaintiff was the assignee of the copyright privileges on matter which he had contributed to a newspaper as news, although it was in reality the product of his imagination. The defendant produced a play into which the author had incorporated as the essence of the plot the incident which the article purported to describe. *Held*, that the plaintiff could not recover under the COPYRIGHT ACT (Act of March 3, 1891, c. 565; 26 Stat. at Large, 1106). *Davies* v. *Bowes*, 50 N. Y. L. J. 913 (U. S. Dist. Ct., S. D. N. Y.).

At common law the author of a literary composition is protected in his property right to the original manuscript, which includes the sole right of first publishing the same for sale. *Press Pub. Co.* v. *Monroe*, 73 Fed. 196; and see *Donaldson* v. *Becket*, 4 Burr. 2408, 2417. American and English courts differ as to whether he also enjoyed a perpetual right in the publication of his works, but both agree that the enactment of a coypright law limits the protection to the term of years specified. *Donaldson* v. *Becket*, 4 Burr. 2408; *Wheaton* v. *Peters*, 8 Pet. 591. As to news, nothing but the form in which it is cast receives protection at common law or under copyright laws. *Walter* v. *Steinkopf*, [1892] 3 Ch. 489; and see *Tribune Co.* v. *Associated Press*, 116 Fed. 126, 128. The common law, however, recognizes a property right in news, as such, where it has acquired an intrinsic commercial value by reason of prompt dissemination. *Nat. Tel. News Co.* v. *Western Un. Tel. Co.*, 119 Fed. 294. But, in the principal case, the article was fiction, ordinarily the peculiarly appropriate subject of copyright, and the court assumes that the only obstacle to recovery was the publication under the guise of news. The result cannot be supported upon the authority which denies the validity of a copyright on a work published under a false title, with intent to defraud the public, for in the principal case the deception was too trivial. See *Wright* v. *Tallis*, 1 C. B. 893, 906. But the defendant acted in reliance upon the plaintiff's representation that the article was news, and, therefore, not the subject of copyright. Obviously the plaintiff should now be estopped from causing the defendant damage by alleging the contrary. There would be no objection, however, to an injunction restraining further infringement by the

defendant, conditioned upon his being reimbursed for the reasonable outlay, innocently incurred. An analogous situation is expressly provided for in the new U. S. COPYRIGHT CODE (Act of March 4, 1909, c. 320, § 20; 35 Stat. at Large, 1080). And see the BRITISH COPYRIGHT ACT, 2 George V, c. 46, Part I, § 8.

CORPORATIONS — DISTINCTION BETWEEN CORPORATION AND ITS MEMBERS — DISREGARDING CORPORATE FICTION — COMPELLING HOLDING COMPANY TO PRODUCE SUBSIDIARY COMPANY'S BOOKS. — The plaintiff was a stockholder in a corporation owning practically all the stock of eight other corporations, a majority of whose boards of directors were officers of the holding company. The plaintiff, charging fraud in the management of the corporate business, brings suit against the holding company and its directors, and moves for the production not only of the defendant's books but for those of the corporations under its control. *Held*, that the motion be granted. *Martin* v. *D. B. Martin Co.*, 88 Atl. 612 (Del.).

There is a well-established right on the part of a shareholder of a corporation, after complying with certain requirements, to proceed in equity against the officers who are fraudulently mismanaging the corporate enterprise. See COOK ON CORPORATIONS, 7 ed., § 645. Another well-recognized incident of stock ownership is the right to inspect the books of the corporation in which the stockholder has invested his money. See 23 HARV. L. REV. 641. The Delaware court disregards the separate entities of the controlled corporations, and cites with approval a *dictum* allowing the corporate fiction to be disregarded to circumvent fraud or where one organization has become the "adjunct" of another. See *In re Watertown Paper Co.*, 169 Fed. 252, 256; *Hunter* v. *Baker Co.*, 190 Fed. 665, 668. The latter half of the rule, at least, seems somewhat arbitrary and uncertain, and has little to commend it. Too often the courts reject the doctrine of separate corporate existence when it is wholly unnecessary to do so, as in the cases where an insolvent fraudulently conveys his property to a corporation of which he is manager. *Bennett* v. *Minott*, 28 Ore. 339; *Bank* v. *Trebein*, 59 Ohio St. 316. Here the corporations being chargeable with knowledge through their officers, the cases could be disposed of under the ordinary principles of fraudulent conveyances. It is submitted that conservatism in disregarding the existence of the corporate unit is very desirable. The way is opened for difficulties and uncertainties, and a loss of the valuable features of organization in this form is more than possible. See *Gallagher* v. *Germania Brewing Co.*, 53 Minn. 214, 219. Further, in the principal case the same result can be reached without a disregard. The holding company as a shareholder had a right to inspect the books of the organizations whose stock it owned. The plaintiff is taking steps to enforce a right belonging to the corporation. See *Flynn* v. *Brooklyn, etc. R. Co.*, 158 N. Y. 493, 508. He could, by joining the subsidiary companies as well as the holding company, secure complete redress without calling the existence of the former companies into question. It is submitted that this is the more desirable way of enforcing the stockholder's rights.

COVENANTS OF TITLE — INCUMBRANCES — PUBLIC HIGHWAY AS BREACH. — The defendant conveyed to the plaintiff, with the usual covenant against incumbrances, rural land across which a public highway had been laid out prior to the time of the conveyance, but which had not been opened for use and the existence of which was not known to either party at the time. *Held*, that the public highway is not a breach of the covenant. *Sandum* v. *Johnson*, 142 N. W. 878 (Minn.).

An easement is such an interference with the dominion of the owner over his land as to constitute a breach of a covenant against incumbrances. *Kellogg* v. *Ingersoll*, 2 Mass. 97; *Copeland* v. *McAdory*, 100 Ala. 553, 13 So. 545. In some jurisdictions, however, an exception is made in the case of a public highway.